

**FILED**

AUG 20 2015

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CLARENCE L. HEARNS,	)	No. C 14-4482 LHK (PR)
	)	
Plaintiff,	)	ORDER OF DISMISSAL
	)	
v.	)	
	)	
A. HEDGPETH, et al.,	)	
	)	
Defendants.	)	

Plaintiff, a California state prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. After an initial review, the court dismissed the complaint with leave to amend. As directed, plaintiff has filed a first amended complaint. For the reasons stated below, the court dismisses the amended complaint.

**DISCUSSION**

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v.*

1 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

2 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
3 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that  
4 the alleged deprivation was committed by a person acting under the color of state law. *West v.*  
5 *Atkins*, 487 U.S. 42, 48 (1988).

6 B. Plaintiff's Allegations

7 1. Plaintiff's federal habeas petition in the Central District of California

8 According to the amended complaint, on June 5, 2009, plaintiff filed a federal habeas  
9 petition in *Hearns v. Harrington*, No. 09-4030 JHN (OP) (C.D. Cal. filed June 5, 2009) ("*Hearns*  
10 *I*").<sup>1</sup> On June 10, 2009, the court in *Hearns I* issued an order to show cause why the petition  
11 should not be dismissed as untimely. On September 22, 2009, after plaintiff filed his response to  
12 the order to show cause, the court issued a report and recommendation dismissing the case with  
13 prejudice because it was untimely. After judgment was entered thereafter, on November 9,  
14 2009, the judgment was set aside because the parties had not had an opportunity to respond to  
15 the report and recommendation. (*Hearns I*, Docket No. 9.) On November 20, 2009, the court  
16 issued a report and recommendation dismissing the case with prejudice because it was untimely.  
17 (*Id.*, Docket No. 10.) On December 21, 2009, plaintiff filed objections. (*Id.*, Docket No. 14.)  
18 On January 14, 2010, the court adopted the report and recommendation, entered judgment, and  
19 denied a certificate of appealability. (*Id.*, Docket Nos. 15-17.)

20 After plaintiff filed his objections in *Hearns I*, but before the court entered judgment, on  
21 December 28, 2009, plaintiff turned over seven boxes of legal material, all marked "legal  
22 material," to prison officials at Kern Valley State Prison ("KVSP") for transfer to Salinas Valley  
23 State Prison ("SVSP"), where plaintiff was to be housed. The following day, plaintiff arrived at  
24 SVSP and was told by Correctional Officer Halderman that none of the legal boxes had been  
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26 <sup>1</sup> The court *sua sponte* takes judicial notice of the pleadings in *Hearns I*. See *Bias v.*  
27 *Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (recognizing that a district court "may take  
28 notice of proceedings in other courts, both within and without the federal judicial system, if  
those proceedings have a direct relation to matters at issue") (internal quotation marks and  
citations omitted).

1 transferred to SVSP. Plaintiff informed Correctional Officer Halderman that plaintiff had a legal  
2 deadline coming up, and that he needed those boxes.

3 Plaintiff filed an administrative grievance ("602") requesting immediate delivery of the  
4 legal boxes. On December 31, 2009, defendant Warden Hedgpeth rejected plaintiff's 602, and  
5 instructed plaintiff to submit it via mail to KVSP, from where plaintiff's boxes originated.  
6 KVSP rejected plaintiff's 602.

7 2. Plaintiff's state habeas petition in Kern County Superior Court

8 On March 11, 2010, plaintiff filed a state habeas petition in Kern County Superior Court.  
9 On May 12, 2010, the Superior Court directed Warden Hedgpeth to locate plaintiff's property.  
10 On June 21, 2010, plaintiff spoke with defendant Sgt. Jensen about the missing legal boxes and  
11 informed Sgt. Jensen that because he was without his legal materials, *Hearns I* had been  
12 dismissed. On July 27, 2010, Warden Hedgpeth and Sgt. Jensen reported to the Superior Court  
13 that plaintiff had received 10 boxes of property between January 6, 2010, and January 13, 2010.

14 On September 12, 2010, plaintiff asked an SVSP prison official whether his seven legal  
15 boxes had arrived yet, and was told that none had been received per Sgt. Jensen. On May 13,  
16 2011, plaintiff filed a civil lawsuit in Superior Court against Warden Hedgpeth and Sgt. Jensen.

17 On January 1, 2012, Warden Hedgpeth ordered the closure of facility law libraries to  
18 inmates unless an inmate could show that he was a party in a current court case with an  
19 impending court-ordered deadline. On March 14, 2012, plaintiff submitted a form requesting  
20 priority legal user status for the law library, but his request was denied because plaintiff did not  
21 qualify for such status.

22 On November 19, 2012, the Superior Court ordered plaintiff to amend his complaint. On  
23 February 1, 2013, plaintiff gave an amended complaint to Correctional Officer Swangler for  
24 mailing to the Superior Court. On March 14, 2013, plaintiff was informed by the Superior Court  
25 that his amended complaint never arrived. Plaintiff explained to the Superior Court that he had  
26 delivered his amended complaint to prison staff over a month before, but the Superior Court still  
27 dismissed the case for failure to comply.

28 On May 5, 2014, plaintiff received copies of the prison form describing the inventory and

1 transportation of plaintiff's legal boxes. It showed a September 9, 2012 record of inventory and  
 2 storage by Sgt. Jensen, presumably meaning that SVSP received all of plaintiff's materials on  
 3 September 9, 2012.<sup>2</sup>

4 C. Plaintiff's federal complaint

5 On October 7, 2014, plaintiff filed a federal complaint in this case. On January 27, 2015,  
 6 the court dismissed the complaint with leave to amend. On March 17, 2015, plaintiff filed an  
 7 amended complaint. Plaintiff's amended federal complaint requests the appointment of counsel  
 8 to evaluate plaintiff's "legal rights and possible relief in *Hearns I*," and an injunction to allow  
 9 plaintiff to submit a motion for reconsideration in *Hearns I*.

10 Again, the court cannot determine what plaintiff's legal claim against either Warden  
 11 Hedgpeth or Sgt. Jensen is. This court's previous order dismissing plaintiff's complaint with  
 12 leave to amend already rejected a possible due process claim with prejudice because the facts  
 13 alleged did not give rise to such a claim.

14 To the extent plaintiff alleges that defendants denied him access to the courts and  
 15 ultimately caused the dismissal of *Hearns I*, the facts alleged also do not support such a claim. A  
 16 prisoner's constitutional right to litigate without interference encompasses the First Amendment  
 17 right to petition the government by filing civil actions that have a reasonable basis in law or fact.  
 18 *Silva v. Di Vittorio*, 658 F.3d 1090, 1102 (9th Cir. 2011). This right does not require prison  
 19 officials to provide affirmative assistance in the preparation of legal papers, but rather forbids  
 20 states from erecting barriers that impede the right of access of incarcerated persons. *Id.* The  
 21 Ninth Circuit has held that "prisoners have a right under the First and Fourteenth Amendments to  
 22 litigate claims challenging their sentences or the conditions of their confinement to conclusion  
 23 without *active interference* by prison officials." *Id.*; see *id.* at 1103-04 (reversing district court  
 24 and finding cognizable denial of access to courts claim based on prisoner's allegations that he  
 25 was repeatedly transferred between different facilities in order to hinder his ability to litigate his

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26  
 27 <sup>2</sup> The court notes that plaintiff alleges that on September 9, 2010, Sgt. Jensen took  
 28 possession of plaintiff's legal material from a CDCR transport bus sergeant. Plaintiff claims that  
 Sgt. Jensen had the boxes relabelled SVSP LEGAL MATERIAL but did not tell plaintiff about  
 the arrival of the boxes.



1 pending civil lawsuits, prison officials seized and withheld all of his legal files, and as a result of  
2 such actions several of his pending suits were dismissed). Destruction or confiscation of legal  
3 work may violate an inmate's right to access to the courts, *see Vigliotto v. Terry*, 873 F.2d 1201,  
4 1202 (9th Cir. 1989), if plaintiff can establish actual injury, *see Sands v. Lewis*, 886 F.2d 1166,  
5 1171 (9th Cir. 1989).

6 After reviewing plaintiff's amended complaint, the court concludes that plaintiff has not  
7 stated a cognizable claim for relief that defendants denied him access to the courts. The  
8 pleadings in *Hearns I* clearly establish that plaintiff was not without his legal boxes until *after*  
9 plaintiff had already filed objections to the report and recommendation recommending that  
10 plaintiff's federal habeas petition be dismissed as untimely. Moreover, a review of the report  
11 and recommendation and order adopting the report and recommendation demonstrates that the  
12 district court in *Hearns I* dismissed plaintiff's petition on the basis that it was untimely by more  
13 than ten years. In addition, plaintiff's motion to vacate the judgment in *Hearns I* shows that  
14 plaintiff did not raise any complaint that he was without his legal materials and thus could not  
15 comply with any court order. Thus, plaintiff has not provided any facts to show that he was  
16 actually injured when he was without his legal boxes. It is apparent from plaintiff's underlying  
17 amended complaint and request for relief that he wishes to re-litigate *Hearns I*. However, a  
18 federal civil rights action is not the proper vehicle for such relief.

19 In addition, the court notes that plaintiff filed a previous federal civil rights case  
20 challenging the same underlying events in *Hearns v. Hedgpeth*, No. 13-0633 LHK (N.D. Cal.  
21 filed Feb. 13, 2013). In that case, the court dismissed SVSP defendants with prejudice for failure  
22 to state a cognizable claim for relief. *Id.*, Docket No. 11. Specifically, the court stated,  
23 "Plaintiff's claims against SVSP defendants, liberally construed, merely allege that the SVSP  
24 defendants did not affirmatively assist him in preparing his legal papers to show that he did not  
25 receive his boxes of legal property from KVSP. This is insufficient to raise an inference  
26 demonstrating that SVSP officials erected barriers preventing him from accessing the courts.  
27 *See Silva*, 652 F.3d at 1102. Based on the allegations presented, it is beyond doubt that plaintiff  
28 can provide no set of facts against the named SVSP defendants in support of his claim which

1 would entitle him to relief. *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007).” *Id.* The  
2 court thereafter transferred the rest of the case to the Eastern District of California where the  
3 remaining defendants were located.

4 Even after being given an opportunity to amend, plaintiff has not otherwise alleged that  
5 defendants violated a specific constitutional right. The court previously warned plaintiff that in  
6 his amended complaint, he was required to state what right he alleges was violated. Plaintiff has  
7 not done so, and the court cannot determine, even liberally construed, what constitutional rights  
8 plaintiff believes were violated.

9 **CONCLUSION**

10 Accordingly, plaintiff’s complaint is DISMISSED with prejudice.

11 IT IS SO ORDERED.

12 DATED: 8/19/2015

13 Lucy H. Koh  
14 LUCY H. KOH  
15 United States District Judge  
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